

THE HONOURABLE SRI JUSTICE C.V. RAMULU

WRIT PETITION No.23287 OF 1999

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DATED: 02.11.2007

Between:

E. Issac

.. Petitioner

And

The Regional Manager,
National Seeds Corporation
Limited,Lalaguda, Hyderabad
and others.

.. Respondents

THE HONOURABLE SRI JUSTICE C.V. RAMULU

WRIT PETITION No.23287 OF 1999

ORDER:

This writ petition is filed seeking a Mandamus declaring the action of the 2nd respondent in passing the relieving order No.Admn/1/NSC-WGL/99-2000/899, dated 31.08.1999, as arbitrary and unreasonable; and consequently to direct the respondents to continue the petitioner as daily wage worker in the respondent Corporation.

It appears, the petitioner was appointed as watchman in the respondent Corporation in the year 1992 on daily wage basis. While so, on introduction of voluntary retirement scheme (VRS) and voluntary separation scheme (VSS) by the respondent Corporation, vide its Circular dated 31.02.1997, the petitioner submitted an application on 16.07.1999 exercising his option for voluntary separation scheme and the same was forwarded to the 1st respondent - Regional Manager of the Corporation, who, in turn, forwarded the same to the Manager (Administration) of the Corporation, New Delhi on 19.07.1999 for its approval. While that being so, the petitioner submitted another application to the 2nd respondent- Area Manager of the Corporation on 30.08.1999 stating that he was withdrawing his application submitted on 16.07.1999 opting for voluntary separation scheme due to personal problems. The 2nd respondent, on the very same day, forwarded the said withdrawal application of the petitioner to the 1st respondent for

necessary action. However, immediately on 31.08.1999, the impugned relieving order has been issued by the 2nd respondent stating that in compliance of approval of the request of the petitioner for his retirement under voluntary separation scheme by the competent authority, vide fax message No.2675 dated 31.08.1999 issued under File No.1 (34)/93-pers/NSC/99-2000 dated 31.08.1999, the petitioner was relieved from the office of the 2nd respondent in the afternoon of that day. The petitioner contends that in spite of his submission of application on 30.08.1999 withdrawing the option exercised by him on 16.07.1999 for voluntary separation scheme, the Corporation has issued relieving orders on 31.08.1999, without considering his withdrawal application and without passing any orders thereon, which is arbitrary and illegal.

The learned counsel for the petitioner stated that as per the Circular No. 1(34)/93-Pers./NSC, dated 17.09.1993, issued by the respondent Corporation, the option once exercised may be final and the worker concerned shall not be entitled to withdraw it on any ground whatsoever, but that itself does not mean that worker is not entitled to withdraw the option before its approval by the competent authority and before its effective date, and in the instant case, the petitioner had withdrawn the option before its acceptance was intimated to him.

The learned counsel for the petitioner, in this regard, relied upon a decision in **J.N. Srivastava v. Union of India and another**^[1], wherein, at paragraph 3, it was held as under:

“The short question is whether the appellant was entitled to withdraw his voluntary retirement notice of three months submitted by him on 3-10-1989 which was to come into effect from 31-1-1990. It is true that this proposal was

accepted by the authorities on 2-11-1989. But thereafter before 31-1-1990 was reached, the appellant wrote a letter to withdraw his voluntary retirement proposal. This letter is dated 11-12-1989. The said request permitting him to withdraw the voluntary retirement proposal was not accepted by the respondents by communication dated 26-12-1989. The appellant, therefore, went to the Tribunal but the Tribunal gave him no relief and took the view that the voluntary retirement had come into force on 31-1-1990 and the appellant had given up the charge of the post as per his memo relinquishing the charge and consequently, he was estopped from withdrawing his voluntary retirement notice. In our view the said reasoning of the Tribunal cannot be sustained on the facts of the case. It is now well settled that even if the voluntary retirement notice is moved by an employee and gets accepted by the authority within the time fixed, before the date of retirement is reached, the employee has locus poenitentiae to withdraw the proposal for voluntary retirement. The said view has been taken by a Bench of this Court in the case of *Balram Gupta v. Union of India* (1987 Supp SCC 228: 1988 SCC (L&S) 126:(1987) 5 ATC 246). In view of the aforesaid decision of this Court it cannot be said that the appellant had no locus standi to withdraw his proposal for voluntary retirement before 31-1-1990. It is to be noted that once the request for cancellation of voluntary retirement was rejected by the authority concerned on 26-12-1989 and when the retirement came into effect on 31-1-1990 the appellant had no choice but to give up the charge of the post to avoid unnecessary complications. He, however, approached the Tribunal with the main grievance centering round the rejection of his request for withdrawal of the voluntary retirement proposal. The Tribunal, therefore, following the decision of this Court, ought to have granted him the relief. We accordingly, allow these appeals and set aside the orders of the Tribunal as well as the order of the authorities dated 26-12-1989 and directed the respondents to treat the appellant to have validly withdrawn his proposal for voluntary retirement with effect from 31-1-1990. The net result of this order is that the appellant will have to be treated

to be in service till the date of his superannuation which is said to be somewhere in 1994 when he completed 58 years of age. The respondent-authorities will have to make good to the appellant all monetary benefits by treating him to have continuously worked till the date of his actual superannuation in 1994. This entitles him to get all arrears of salary and other emoluments including increments and to get his pensionary benefits refixed accordingly. However, this will have to be subject to adjustment of any pension amount and other retirement benefits already paid to the appellant in the meantime up to the date of his actual superannuation. It was submitted by learned Senior Counsel for the respondent-authorities that no back salary should be allowed to the appellant as the appellant did not work and therefore, on the principle of “no work, no pay”, this amount should not be given to the appellant. This submission of learned Senior Counsel does not bear scrutiny as the appellant was always ready and willing to work but the respondents did not allow him to work after 31-1-1990. The respondents are directed to make available all the requisite monetary benefits to the appellant as per the present order within a period of 8 weeks on the receipt of copy of this order at their end. Office shall send the same to the respondents at the earliest.”

The learned counsel for the petitioner also relied on a decision in **Shambhu Murari Sinha v. Project & Development India and another**^[2], wherein the question arose for consideration is whether it is open to a person having exercised option of voluntary retirement to withdraw the said offer after its acceptance but before it is made effective. The Supreme Court, while relying upon the earlier Judgments in **Balram Gupta v. Union of India** (1987 Supp SCC 228 : 1988 SCC (L&S) 126 : (1987) 5 ATC 246), **J.N. Srivastava V. Union of India** (1 supra) ((1998) 9 SCC 559 : 1998 SCC (L&S) 1251) and **Power Finance Corpn. Ltd. V. Pramod Kumar Bhatia** ((1997) 4 SCC 280 : 1997 SCC (L&S) 941), in which it was held that the

resignation, in spite of its acceptance, can be withdrawn before the “effective date”, allowed the appeal filed by the appellant-employee with a direction that the appellant shall be allowed to continue in service with all consequential benefits.

The purport of the aforementioned two Judgments would indicate that even option is exercised by the employee for resignation, he is entitled to withdraw the same before it is accepted by the employer and, in case it is accepted, he is entitled to withdraw the same before the effective date i.e. the date from which it comes into effect.

In the instant case, admittedly, on 30.08.1999, the petitioner submitted his application withdrawing his option exercised on 16.07.1999 for voluntary separation scheme, whereas the impugned relieving order was issued on the very next day i.e. on 31.08.1999 stating that a fax message was received by the 2nd respondent from the higher authorities on the same day approving the request of the petitioner for voluntary separation scheme and hence he was relieved from the office on that day itself. In fact, there was no urgency for the higher authorities to send a fax message accepting the option exercised by the petitioner for voluntary separation scheme and directing to relieve him on 31.08.1999. The endorsement made by the 2nd respondent on the withdrawal application, dated 30.08.1999, submitted by the petitioner shows that the said application was forwarded to the higher authorities on the same day itself. But, the higher authorities, without passing any orders thereon, sent a fax message accepting the option exercised by the petitioner for voluntary separation scheme.

Learned counsel for the respondents, however, justified the

action of the respondents stating that admittedly the option to be given effect to from 31.08.1999 and since the petitioner made an application seeking withdrawal of his option on 30.08.1999 i.e. one day before the effective date, there was some communication gap and the management cannot be blamed for the same.

In view of the decisions relied upon by the learned counsel for the petitioner, I am of the opinion that the action of the Corporation in passing the impugned order relieving the petitioner from service with effect from 31.08.1999, without considering his application submitted on 30.08.1999 seeking withdrawal of the option exercised by him on 16.07.1999, is arbitrary and illegal. However, as stated by the learned counsel for the respondents, may be the withdrawal application dated 30.08.1999 was under transit and as the said application was submitted only on 30.08.1999 i.e. just one day before 31.08.1999, the date from which the option to be given effect to, there was no much time available for the respondents to look into the same and, hence, they cannot be blamed for the same. But, law does not permit such an action by the respondents. Once petitioner submitted an application for withdrawal before his application for voluntary separation scheme was accepted, he is entitled to continue in service.

Under those circumstances, the impugned order, dated 31.08.1999, is set aside and the respondents are directed to reinstate the petitioner into service with continuity of service, attendant benefits, but without any backwages as the petitioner was only a daily wage employee as on the date of relieving him from service.

The writ petition is allowed to the extent indicated above. No order as to costs.

**C.V.RAMULU,
J**

2nd November, 2007
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[\[1\]](#) (1998) 9 SCC 559

[\[2\]](#) (2000) 5 SCC 621